

# EXHIBIT H

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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COMPASS-CHARLOTTE 1031, LLC.,

Plaintiff,

-v- 24-cv-55

PRIME CAPITAL VENTURES, LLC., et al.,

Defendants.

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MAE A. D'AGOSTINO  
January 22, 2024  
445 Broadway, Albany, New York

A P P E A R A N C E S

FOR THE PLAINTIFF:

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RECEIVER:

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1 COURT CLERK: Today is Monday, January 22nd,  
2 2024, the time is 9:10 a.m. The case is  
3 Compass-Charlotte 1031, LLC versus Prime Capital  
4 Venture, LLC, et al., case number 24-cv-55. We are here  
5 today for an order to show cause hearing.

6 May we have appearances for the record,  
7 please.

8 MR. FENLON: Good morning, your Honor,  
9 Christopher Fenlon, Hinkley Allen & Snyder, on behalf of  
10 plaintiff.

11 THE COURT: Good morning.

12 MR. TUXBURY: Good morning, Jim Tuxbury,  
13 Hinkley Allen on behalf of plaintiff.

14 THE COURT: Good morning.

15 MR. ESSER: Good morning, your Honor. Will  
16 Esser, Parker Poe, on behalf of the plaintiff.

17 THE COURT: Good morning.

18 MR. VAN TOL: Good morning, your Honor, Pieter  
19 Van Tol from Hogan Lovells, on behalf of Defendant Prime  
20 Capital Ventures.

21 THE COURT: Good morning to you.

22 MR. LEVINE: Good morning, your Honor. Paul  
23 Levine; I'm the receiver.

24 THE COURT: Okay. Good morning. Well,  
25 gentlemen, I thought I was going to be sitting by the

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1 fireplace watching football this weekend but I wasn't.  
2 I was reviewing all of the papers and I have some  
3 questions that you can answer just from where you're  
4 sitting before I delve into other issues.

5 The first question that I have is -- I suppose  
6 that I will ask defense counsel -- is: Can you tell me  
7 the relationship between all of these Berone entities  
8 such as Berone Capital Fund, Berone Capital Partners,  
9 Berone -- I will do it this way. Berone Capital Fund,  
10 LP, Berone Capital Partners, LLC, Berone Capital, LLC,  
11 Berone Capital Equity Fund, 405 Motorsports, f/k/a  
12 Berone Capital Equity Partners, LLC.

13 Do you know what the exact relationship is  
14 with Prime Capital Ventures? Because it appears that  
15 there's a very significant issue about what the  
16 relationship is. So what's your take on it?

17 MR. VAN TOL: My take, your Honor, is that  
18 Prime Capital Ventures mostly dealt with or at least all  
19 I've seen is Berone Capital Fund, LP. I don't know what  
20 those other entities are. Most of the documents just  
21 say Berone without any differentiation. And my  
22 understanding of the relationship is my client was  
23 introduced to Berone sometime in 2022, entered into a  
24 joint venture agreement with Berone, was then dealing  
25 with a -- what I will call an intermediary or middle

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1 person called Reign, which then was supposed to  
2 introduce and facilitate the relationship between Prime  
3 and Berone. So the money would go through Reign to  
4 Berone.

5 So to answer Your Honor's question as briefly  
6 as I can, they are the hedge fund to which Prime Capital  
7 would send funds as part of the transaction with  
8 borrowers.

9 THE COURT: And you're aware, are you not,  
10 that Berone Capital Fund, LP, is taking the position  
11 that they never had a joint venture agreement with your  
12 client? Correct?

13 MR. VAN TOL: I'm keenly aware of that,  
14 your Honor.

15 THE COURT: Okay. Have a seat. As a matter  
16 of fact, as I ask these questions, you don't have to  
17 stand up. I'm looking for clarity.

18 Mr. Fenlon, do you contest the fact that  
19 Compass-Charlotte and at least Prime Capital Ventures  
20 have a binding arbitration agreement?

21 MR. FENLON: Your Honor, my partner,  
22 Mr. Tuxbury, is here to address the legal arguments with  
23 respect to the arbitration.

24 THE COURT: Okay. Same question for  
25 Mr. Tuxbury. Do you deny or contest that there is a

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1 binding arbitration agreement between Compass-Charlotte  
2 and Prime Capital Ventures or whatever we want to --  
3 Prime Capital Venture, LLC?

4 MR. TUXBURY: No, we don't dispute that.  
5 There is an arbitration agreement in the letter of  
6 credit agreement itself.

7 THE COURT: So, ultimately, regardless of what  
8 decisions I make on some of the matters that have been  
9 brought before me, you believe this case will go to  
10 arbitration?

11 MR. TUXBURY: That's a different question,  
12 your Honor.

13 THE COURT: Okay.

14 MR. TUXBURY: That's -- historically, Prime  
15 has not been asserting any arbitration demand and of  
16 course arbitration is waivable. What we believe we have  
17 filed here is a necessity for a provisional remedy --

18 THE COURT: That, I understand.

19 MR. TUXBURY: -- in aid of arbitration. With  
20 receiver in place, the determination of the adjudication  
21 of claims vis-a-vis Compass and Prime will be within the  
22 purview of the receiver. Whether there will be an  
23 arbitration or not, that's for a decision down the road.  
24 If the entity representing Prime and presumably Prime  
25 search that arbitration clause for the litigation of the

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1 merits of this dispute, then I would agree, yes, there's  
2 an arbitration agreement. The substantive merits of the  
3 underlying contract dispute would go there if that was  
4 asserted by Prime.

5 I'm just making a point that it's a waivable  
6 claim, even though it's -- according to litigator  
7 dispute notwithstanding an arbitration agreement, so I  
8 put --

9 THE COURT: Having read their papers, I'm  
10 pretty confident that they will be asserting that  
11 they -- there should be an arbitration. You have read  
12 the papers too, correct?

13 MR. TUXBURY: Of course, your Honor. I was  
14 making the point that the receiver -- part of the  
15 receiver's jurisdiction is assertion of claims on behalf  
16 of Prime in -- in this fiduciary duties to the Court to  
17 oversee the account information and the -- the receiver  
18 then would have control over that determination going  
19 forward on that issue.

20 THE COURT: Right. At this moment, I'm not  
21 even dealing with the receiver issue. I'm just dealing  
22 with the fact that it appears that there's a binding  
23 arbitration clause, and if at some point Prime Capital  
24 Ventures wants to invoke that clause, they may.

25 MR. TUXBURY: I agree, your Honor.

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1 THE COURT: Okay. Will Berone defendants be a  
2 part of that arbitration, in your view?

3 MR. TUXBURY: I -- I -- I think it depends on  
4 the Berone parties, your Honor. They're not signatories  
5 to the agreement. We have allegations against them.  
6 While arbitration agreements are futures of contract  
7 between the parties, you can bring non-signatories into  
8 arbitration but it's difficult to bring a defendant  
9 non-signatory into an arbitration.

10 So I would -- if they were to object to the  
11 application of arbitration over the dispute  
12 between Compass and Berone, to be honest, I haven't  
13 looked at that issue, your Honor, sufficiently but I  
14 know from my experience that's an open question as  
15 whether they could be dragged into arbitration.

16 THE COURT: What's your view, Mr. Van Tol, as  
17 to whether if there is an arbitration Berone defendants  
18 will be a part of that?

19 MR. VAN TOL: I have a similar view,  
20 your Honor. It's clear they're not in the agreement.  
21 They claim that they have never seen the agreement so it  
22 could be an uphill battle to join them in the  
23 arbitration.

24 THE COURT: As I understand it, Berone  
25 defendants did not participate in the involuntary

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1 bankruptcy proceeding. Is that correct, Mr. Fenlon?

2 MR. FENLON: That's correct, your Honor.

3 THE COURT: Why was the involuntary bankruptcy  
4 proceeding dismissed? Has it been dismissed, by the  
5 way?

6 MR. FENLON: Your Honor, I did not represent  
7 any of the creditors, so I'm going to defer to my  
8 co-counsel.

9 THE COURT: Has it been dismissed?

10 MR. ESSER: The answer to that, your Honor, is  
11 yes, although the bankruptcy court has retained  
12 jurisdiction over several issues. So if I could give a  
13 little bit of detail to the Court on that.

14 The issue quickly became -- the voluntary  
15 bankruptcy was filed on December 19th, interim trustee  
16 put in place on December 21st. The Court wanted the  
17 interim trustee to immediately work with Prime to  
18 discover what assets it had and whether it had the  
19 ability to repay these various ICA deposits.

20 What ended up happening was that Prime made it  
21 clear, contended that the vast majority of the ICA  
22 deposits were being held in an account at RBC in the  
23 name of Berone Capital. The bankruptcy judge went ahead  
24 and ordered Berone Capital to show up, to provide  
25 information about that account. Berone did not show up.

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1 The Court entered contempt against them, they still did  
2 not show up, and the Court expressed great concern that  
3 a party who is allegedly holding the majority of the  
4 funds was not before it.

5 So based upon that, the petitioning creditors  
6 filed a motion to dismiss so that they could then  
7 proceed in a forum where they could bring all parties.

8 THE COURT: Okay. The bankruptcy trustee in  
9 the involuntary bankruptcy proceeding that had  
10 been pending, am I correct that he issued a statement or  
11 an opinion to the bankruptcy court that he could not  
12 find the 50-plus million dollars that were supposedly  
13 being held by Berone?

14 MR. ESSER: Yes, that's correct, your Honor.  
15 What -- there was a -- a -- basically a bank account  
16 statement which was provided by Prime to the bankruptcy  
17 interim trustee which purported to say that there was an  
18 account held at RBC Capital Markets in the name of  
19 Berone Capital Fund, LP, which was allegedly held for  
20 the benefit of Prime Capital Ventures and listed some  
21 \$52 million on it.

22 Looking at the form which was provided, there  
23 were some red flags about whether it was legitimate or  
24 not. It said it was page 1 of 1, so there was no  
25 transactions details behind it. It wasn't issued at the

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1 end of the month. There was some formatting things that  
2 were very weird. I don't have the exact number but we  
3 attached that as an exhibit to the complaint.

4 The interim trustee ultimately ended up  
5 talking with RBC and came back and informed the Court  
6 and all the parties that RBC had -- had communicated to  
7 him that that reported account statement was a fraud,  
8 that it was not one that they prepared or came from  
9 them, that they had looked at that what is referred to  
10 as RBC Partnership account and that there was not  
11 anywhere near \$52 million in there.

12 We have received the records from them through  
13 subpoena and there was more like \$2 million in there.  
14 So we still, as we sit here today, have a situation of  
15 50 million-something unaccounted for, not tracked.

16 THE COURT: Okay. Now, Mr. Van Tol, I've read  
17 various motion papers over the last 72 hours or so that  
18 indicate that the statements by your client that the  
19 Royal Canadian Bank was holding 50-plus million dollars  
20 that Berone had -- Berone was holding \$52 million for  
21 the benefit of Prime. I've read statements from the  
22 bankruptcy trustee that the money has seemed to  
23 vanished.

24 I've read documents that say that the Royal  
25 Canadian Bank does not have anywhere near \$52 million in

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1 its account. I've read statements that -- Prime  
2 statement that Berone was in a joint venture with them  
3 is not accurate. In fact, Berone defendants have gone  
4 so far as to say that they have never seen such an  
5 agreement and that they have an opinion that the  
6 agreement was electronically forged.

7 There are individuals, including the plaintiff  
8 in this case, and the plaintiff that your law firm is  
9 representing in Florida that would like to get access to  
10 some or all of this \$52 million and you don't want me --  
11 you didn't want me to appoint a receiver and you don't  
12 want me to keep a receiver in place.

13 Is that a fair summary on my part?

14 MR. VAN TOL: Except for the last part, your  
15 Honor. We have no objection to a receiver staying in  
16 place as to Berone. We completely agree with the  
17 plaintiff's efforts to get discovery from the Berone.  
18 We have not objected at all.

19 THE COURT: Why should I not want a receiver  
20 in place for your client?

21 MR. VAN TOL: Several reasons, your Honor.  
22 Let me start with the most practical, which is it is  
23 literally killing the business of Prime Capital. Since  
24 December 19th, when there was a wrongful involuntary  
25 proceeding brought, Prime Capital's business has ground

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1 to a halt. It loses money every day even though there  
2 are people who want to close their transactions with  
3 Prime. That's the practical reason.

4 THE COURT: Could I just stop you for a  
5 minute.

6 MR. VAN TOL: Yes, your Honor.

7 THE COURT: If indeed your client is supposed  
8 to have access to \$52 million, wouldn't that solve the  
9 problem, paying back Compass-Charlotte the money that  
10 they paid in and paying your law firm's client in  
11 Florida the millions that they paid in? I mean, why  
12 shouldn't I have extreme concern about Prime Capital  
13 Ventures?

14 MR. VAN TOL: Because there's no evidence,  
15 your Honor, that Prime Capital Ventures took -- let's  
16 use Compass as an example. There is no evidence that  
17 Prime Capital Ventures took Compass's money and sent it  
18 anywhere other than to Berone. It went to Berone  
19 accounts, it went to a Martin Carrow (phonetic), who is  
20 associated with Berone. That's -- that money is with  
21 Berone.

22 What happened, your Honor, is when a borrower  
23 says I want to do the transaction when I get my money  
24 back, Prime Capital turns to Berone and says we have a  
25 deal that's not happening. Send the money back. We

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1 have to unwind the transactions that that money is being  
2 used for. We get it from Berone. That's why,  
3 your Honor, there's not 15.9 million to give back to  
4 Compass. That would be something that Prime would love  
5 to get Compass off our back, of course. But the issue  
6 is that money, because that's how the deals work, went  
7 to Berone.

8 And as to the other statements, your Honor, in  
9 our sur-reply, we show that Berone was defrauding us.  
10 Those statements that we have been getting since  
11 December 2022 looked like the ones from December 26th  
12 with some differences. But each one said that this is  
13 money being held for Prime Capital. That turns out to  
14 be a lie, and we found out about the lie when the  
15 records came in. I found out from my client on Saturday  
16 night. They compared what Compass has been able to find  
17 compared to what Berone gave us. They are two different  
18 documents, your Honor. Complete forgeries.

19 THE COURT: Is there any defense attorney who  
20 would like to respond to that?

21 MR. ESSER: I would very much like to respond  
22 to that, your Honor. What if I had -- if I may have the  
23 Court's indulgence, I brought a -- four documents for  
24 all the records that I highlighted a couple of portions  
25 that I think would be helpful, if I may hand them up.

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1 THE COURT: Yes. Please give them to my  
2 courtroom deputy, Ms. Norton.

3 MR. ESSER: Your Honor, may I stand at the  
4 podium for this?

5 THE COURT: Yes, you may.

6 MR. ESSER: So, your Honor, this goes back to  
7 the bankruptcy, and to give Your Honor some context,  
8 when the Court appointed the interim trustee on December  
9 21st in the bankruptcy, one of the things that the Court  
10 orally did was to require Prime to provide evidence of  
11 where Compass's deposit was. \$16 million. So that was  
12 a requirement from the Court on December 21st.

13 In response to that, Prime's counsel at the  
14 time, Cullin, filed this letter with the bankruptcy  
15 Court, and you'll note on page 2 the statement which  
16 Prime made to the Court at that time.

17 Prime Capital has advised us what all of the  
18 ICA deposits who are listed on Schedule I attached are  
19 being held in Prime Capital's accounts, and if you then  
20 turn to the last page of that letter, it specifically  
21 has a schedule of ICA deposits and included on that  
22 schedule is Compass's deposit.

23 If you then, your Honor, turn the page, the  
24 next day, they -- Cullen and Dykman provided to our firm  
25 in response to the judge's order even more clarity,

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1 which was this next statement, which -- in which they  
2 indicated that Compass's deposit was held at RBC.

3 Then, your Honor, Mr. Roglieri, the principal  
4 and founder of Prime, showed up in the bankruptcy court.  
5 This was his testimony to the Court and to the trustee  
6 when asked about their business model for Prime and how  
7 they treated and used ICA deposits. So I will just read  
8 the section here, your Honor.

9 My question -- this is the interim trustee  
10 asking on the Court. My question is those monies that  
11 are provided by those borrowers were entered into those  
12 transactions with Prime Capital Ventures and Prime  
13 Capital Ventures received those funds. Are those funds  
14 then deposited into Berone Capital? Is that where they  
15 go? Mr. Roglieri, the ICA funds? Correct.  
16 Mr. Roglieri, that is correct.

17 Then in response down a little further, the  
18 trustee again asks, okay. We will look at this number  
19 that is provided under Prime Capital Ventures from  
20 Berone Capital. Is that the credit line, that  
21 \$50 million, or is that actual monies that were put into  
22 Berone Capital from Prime Capital Ventures?  
23 Mr. Roglieri, monies that were put into Berone Capital  
24 from Prime.

25 Your Honor, all of those documents are public

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1 record, part of the complaint. What we then attached  
2 was the last one, is the document which was filed under  
3 seal and it is the Citi Bank account for Prime, which is  
4 where the ICA deposit for Compass was sent. And now if  
5 Mr. Roglieri was telling the truth, which was that when  
6 they received ICA deposits, they would send those ICA  
7 deposits along to Berone, and Berone would work some  
8 magic where it got a multiple on that and then offered a  
9 line of credit back to the borrowers.

10 So if all of that were true what Mr. Roglieri  
11 was saying, what we would see is some evidence that  
12 Compass-Charlotte's deposit went into an account at  
13 Prime and ended up being sent to Berone Capital.

14 That is not what the records show. What we  
15 have is -- the last document is the bank account  
16 statement from Citi Bank, and if you look at page 4 of  
17 that document, what you see is you see that the ICA  
18 deposit from Compass-Charlotte was wired into the  
19 account on April the 27th. At the time when it was  
20 wired into the account, you can see there was a negative  
21 balance of \$6.5 million in that account caused by, among  
22 other things, a purchase on that same day of a million  
23 dollars to RM Auctions, a company of selling luxury  
24 cars.

25 There is no evidence whatsoever -- and I have

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1 gone through all of the bank account records -- if Prime  
2 contends that Berone Capital has 50-something million  
3 dollars of ICA deposits, it would be very simple for  
4 Prime to show here are our records. Here are the wires  
5 which show that we sent 50-something million dollars  
6 over to Berone. Your Honor, those records don't exist.

7 We have gone to the various banks, we have  
8 gotten all of the records that we can relating to Prime  
9 Capital Venture's accounts. We have tracked over and  
10 over ICA deposits coming into those accounts, and rather  
11 than being sent to Berone, they are used to pay back  
12 other people who are claiming their ICA deposits back.  
13 They are being used to buy watches, they are being used  
14 to buy cars. They are used -- things of that nature.

15 When we received the RBC statements, which  
16 conclusively demonstrated that Berone did not have  
17 \$52 million in that account, both the receiver, that's  
18 Mr. Levine and I, immediately went to back to Mr. Van  
19 Tol and said, Mr. Van Tol, here are the RBC statements.  
20 They show Berone doesn't have \$52 million in it. If  
21 your client in fact gave \$52 million to Berone, please  
22 give us the bank account statements. Show us the track --  
23 the funds going to Berone so that we can team together  
24 and go after Berone to locate these monies.

25 If Berone has been lying to your client, then

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1 clearly it's in the advantage of all the parties here to  
2 chase after them. There has been radio silence, and the  
3 reason for that is because none of the bank account  
4 statements show any money going to Berone after that  
5 initial \$20 million which took place in November of  
6 2022, and for which Prime sued Reign Capital in February  
7 of 2023 and that case was before the Court here.

8 So there is no evidence of any transfer of  
9 funds to Berone from at least March or April of 2023 to  
10 the present date. If such exists, we have asked for it,  
11 haven't been provided. So at this point in time, it  
12 looks to us, from looking at the bank accounts records,  
13 that Mr. Roglieri has simply spent that money and used  
14 it to repay old people's money with new, which of course  
15 is a classic definition of Ponzi scheme. So that's what  
16 the records show, your Honor.

17 THE COURT: Okay. Thank you.

18 MR. VAN TOL: May I respond just briefly,  
19 your Honor?

20 THE COURT: Yes, of course.

21 MR. VAN TOL: Very simple explanation. I hate  
22 to say anything in this case is simple but as of April  
23 and May of 2023, Prime Capital had an account with  
24 Berone that held \$20 million. That \$20 million helped  
25 secure the 15.9 sent in by Compass and the evidence of

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1 that is Exhibit 9 to my declaration submitted over the  
2 weekend with a sur-reply.

3 Now, we have found out since -- in the past  
4 few days that that statement from -- that is RBC -- let  
5 me back up. I messed it up. Exhibit 6 is what my  
6 client received from Berone showing 20 million.  
7 Exhibit 9 is actually how much money was in there as of  
8 March 2023 and it was nowhere close to \$20 million.

9 So the short answer is the 15 million was  
10 already there, being held and secured for anyone who had  
11 a deal with Prime. What Prime didn't know is Berone was  
12 then transferring the money elsewhere, according to what  
13 we know.

14 MR. ESSER: The \$20 million which came into  
15 that account was an ICA deposit from Onward Holdings,  
16 who did not receive their money back and has sued Prime  
17 in federal court in Utah. So that \$20 million has  
18 nothing whatsoever to do with Compass. It was Onward  
19 Holding's money and regardless of that, if you simply  
20 read the complaint which Prime filed in federal -- in  
21 this Court, Prime alleged that that money was lost and  
22 absconded by Reign International.

23 THE COURT: It was what?

24 MR. ESSER: They say it was absconded with by  
25 the defendant, Reign International, who they sued. So,

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1 at the same time -- I think what Mr. Van Tol is trying  
2 to argue is that at the same time his client is suing a  
3 third party saying this \$15 million has gone and  
4 disappeared and been lost, oh, but Berone has given us  
5 an account statement which shows 20 million so we can  
6 rely upon that.

7 Those two are entirely contradictory, and  
8 moreover, it -- the whole point which we are making,  
9 your Honor, is Mr. Roglieri very clearly testified to  
10 the bankruptcy court that the actual ICA deposit monies,  
11 when they came in were sent to Berone, not some -- not  
12 something else. It wasn't secured by some other money  
13 that already existed there.

14 The bankruptcy court ordered him to tell us --  
15 to tell us specifically where is our deposit? Where is  
16 our \$16 million and what he represented to the Court,  
17 what's included in the filings was -- he represented  
18 that our 16 million, not some -- not somebody else's,  
19 not something that secured ours, our 16 million was at  
20 RBC. That was false and untrue and the money was spent  
21 otherwise.

22 THE COURT: Okay.

23 MR. VAN TOL: May I -- I promise this is  
24 brief.

25 THE COURT: Listen, I'm not trying to stop

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1 anybody from talking. There is issue upon issue here  
2 and I'm looking for clarity, which is why I'm not  
3 handling this in a traditional motion way. May it  
4 please the Court? I move for for the following three  
5 reasons. So go ahead.

6 MR. VAN TOL: As I said, I will be brief.  
7 This is a fundamental disagreement that will be resolved  
8 in the arbitration. The question is under the credit  
9 agreement when the money comes in, according to Compass  
10 that money has to sit in an account. That's it. It  
11 can't go anywhere else. We say that can't be the case.  
12 This money is being used to obtain a loan from elsewhere  
13 and you knew that coming into it. So --

14 THE COURT: Why did your client tell the  
15 bankruptcy court that it immediately goes to Berone?

16 MR. VAN TOL: It does. It does, your Honor.  
17 But money is fungible. Berone -- we contacted Berone  
18 and say, hey, Reign doesn't have the money. They say  
19 that's Reign, that's not us. We have your money. We  
20 have \$20 million. Here's an account statement to prove  
21 it. So the debate that we're having with Compass and  
22 Compass in good faith has an argument that we should  
23 hold that money. Our argument is that's antithetical to  
24 the way this deal works. We don't have to hold the  
25 money. We have to be able to pay back the money to you

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1 when you asked for it. That's what the 20 million was  
2 securing, your Honor.

3 THE COURT: Yes, Mr. Levine.

4 MR. LEVINE: Judge, the parties have said many  
5 other things I was going to present to the Court. It's  
6 astounding to me that Prime Venture Capital,  
7 Mr. Roglieri, would rely upon a two-person shop for this  
8 hedge fund to take control over \$52 million. I mean, if  
9 nothing else, and that they don't know where that money  
10 is, they didn't monitor the situation, to me that shows  
11 gross mismanagement of their business and other people's  
12 monies.

13 THE COURT: Let me briefly turn to a different  
14 topic that is of significant concern to me.

15 Mr. Van Tol, your law firm is representing a  
16 client Camshaft in Florida that has its own lawsuit  
17 against Prime. They're looking to clawback millions of  
18 dollars that they contend are due them. So you've got  
19 your law firm representing Camshaft in Florida trying  
20 to, as I said, get money from Prime and here you are and  
21 your law firm in the Northern District of New York  
22 representing Prime.

23 On its face, it seems totally unacceptable.  
24 You say in your papers, oh, not to worry, Judge, we have  
25 the consent of our clients to do this. It doesn't take

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1 a complicated legal argument to understand how troubling  
2 this is to the Court.

3 When you received consent from Camshaft, did  
4 you tell them that at the time you were just simply  
5 representing Prime in an involuntary bankruptcy? Is  
6 that what you told them? Or somebody told them? I  
7 don't know if it was you or somebody from your law firm.

8 MR. VAN TOL: It wasn't me, your Honor, but my  
9 understanding was we -- because only the bankruptcy was  
10 going on, that's all we could represent to them. But we  
11 represented to them that we would come back to them if  
12 it got to be a bigger issue.

13 THE COURT: It's gotten bigger.

14 MR. VAN TOL: And Camshaft has no problem with  
15 that, your Honor. We will get you written evidence of  
16 that. They have completely, knowingly consented to the  
17 representation as did Prime.

18 THE COURT: Do you have written proof of that?

19 MR. VAN TOL: We are obtaining written proof  
20 as Mr. Esser requested; we will get that for him. But  
21 the understanding from the very beginning is we are in  
22 for Prime Capital. Camshaft has no problem with it  
23 because, your Honor, they don't believe that either an  
24 involuntary bankruptcy or receivership helps them at  
25 all.

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1 THE COURT: I have to -- you know,  
2 Mr. Van Tol, I believe in clients being able to have the  
3 attorneys of their choice but this is absolutely very,  
4 very concerning, and you say Camshaft doesn't think it's  
5 a good idea for there to be a receiver. I'm not privy  
6 to what exact conversations that you have had with  
7 Camshaft, but I was a trial lawyer for a long time and  
8 the conversation should be along the lines of, Camshaft,  
9 we are in the Northern District of New York doing the  
10 best we can to prevent that receiver be appointed to  
11 keep monies status quo pending a possible arbitration,  
12 money that could possibly be used to satisfy the case  
13 that you have against Prime.

14 I mean, this can't be wink, wink, wink, don't  
15 worry because Prime Capital Ventures, LLC, is different  
16 from Prime Ventures something else. I mean, I'm not --  
17 I am not attempting to impugn your integrity or the  
18 integrity of the law firm. However, on its face, this  
19 appears very, very irregular.

20 MR. VAN TOL: May I explain the background,  
21 your Honor?

22 THE COURT: Please do.

23 MR. VAN TOL Tol: There are other borrowers  
24 who are in the position of Camshaft who sued Prime  
25 Capital, one, and were paid a judgment because the

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1 monies were available to pay the judgment. When there  
2 is an involuntary bankruptcy or a receivership, nothing  
3 goes anywhere.

4 So I can't speak to Camshaft's motivation but  
5 it makes perfect sense from a litigation point of view  
6 to have someone like Prime open, doing business with  
7 access to capital. They -- even Compass cited to you  
8 several cases, trust, financial. They were paid. Other  
9 people were paid. When they sued, they recovered on  
10 their judgment. So it is not irrational for a client to  
11 say I'd rather have something to go after than to have  
12 frozen assets.

13 THE COURT: Well, from the record before me,  
14 there's nothing to go after. That's the problem.

15 MR. VAN TOL: At the time no one knew that,  
16 your Honor, that's the problem. This was discovered  
17 as -- again, Saturday night. Before then, when -- when  
18 Camshaft waived its -- any conflict, it believed, as  
19 Compass did, that there was money to be had. The idea  
20 that the money isn't there is something that has been  
21 established through this litigation. There were  
22 allegations of that, it was not known. Emphasize it was  
23 was not known until last week when the bank records came  
24 in.

25 THE COURT: This is quite a hornet's nest

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1 and as a trial lawyer, I can't imagine why your law firm  
2 would want to do this at this point in time, represent  
3 Camshaft in Florida, trying to recover money and  
4 represent the company that they're trying to recover the  
5 money from here.

6 MR. VAN TOL: Your Honor, that's why we  
7 insisted on full disclosure to the clients. That's why  
8 we insisted on a waiver and we obtained the waiver  
9 because at bottom, the interests align in the sense that  
10 Camshaft wants Prime to be open for business. Prime  
11 wants to be open for business. Those two interests are  
12 perfectly aligned, your Honor.

13 THE COURT: I don't think they are and I can't  
14 agree with you, and if I were in your shoes, my level of  
15 discomfort could not possibly be higher as a litigator.

16 The questions that are before me at this point  
17 in time include whether it was appropriate for me to  
18 appoint a receiver, whether the receiver should stay in  
19 place, whether I should allow for further discovery  
20 pending a potential arbitration, issues regarding a  
21 potential conflict between Mr. Van Tol's law firm  
22 representing Camshaft in Florida, which is trying to  
23 recover money from Prime and at the same time  
24 representing the interests of Prime.

25 I will note for the record that there has been

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1 no appearance as of this morning from anyone  
2 representing any of the Berone defendants.

3 Have plaintiff's counsel had any contact  
4 whatsoever with any counsel for Berone?

5 MR. FENLON: No. No, your Honor. I don't  
6 believe the receiver has either but he can speak to  
7 that.

8 MR. LEVINE: Your Honor, I spoke to Jeremiah --

9 THE COURT: Beguesse.

10 MR. LEVINE: Beguesse on Thursday, I believe.  
11 I strongly recommended that he get counsel.

12 THE COURT: Okay. But you haven't spoken to  
13 any counsel?

14 MR. LEVINE: No. And in response to his --  
15 the email's attached to my report in my response to  
16 that, you know, I again recommended, among other things,  
17 that he get counsel.

18 THE COURT: Mr. Van Tol, have you had any  
19 contact with any counsel for any Berone companies?

20 MR. VAN TOL: None, your Honor. I would note  
21 for the record that apparently the receiver and Counsel  
22 for Compass have had communications with Berone without  
23 me being aware of those communications, so after the  
24 fact. I would hope that's an oversight and it wouldn't  
25 continue. I should be in all such conversations.

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1 MR. LEVINE: Your Honor?

2 THE COURT: Yes.

3 MR. LEVINE: In my role as receiver, I  
4 respectfully disagree with that. I need to talk to  
5 whoever I need to talk to when I need to talk to them.  
6 So I'm not -- I don't understand where that's coming  
7 from. Not a party here.

8 THE COURT: I know.

9 MR. VAN TOL: To be clear, your Honor, I  
10 wasn't referring to what Mr. Levine does. I'm referring  
11 to the fact that Mr. Esser was on the communications and  
12 I wasn't. Mr. Levine is free to do as he sees fit.

13 MR. FENLON: Your Honor, if I may. I'm not  
14 aware of any obligations on behalf of a party to  
15 litigation to include all parties with communications  
16 with a single other entity. Berone is not represented  
17 by counsel. Of course if they were, we would have their  
18 counsel in communications. There's no objection to  
19 include counsel.

20 THE COURT: I have to agree. I mean, if they  
21 are represented, absolutely.

22 MR. ESSER: Your Honor, if I may just add one  
23 point to that. The first communication I think of any  
24 point in time was to the receiver on Thursday, and the  
25 receiver ended up copying me I believe on a response to

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1     them, basically asking about the details have you ever  
2     seen this joint venture agreement, to which they  
3     responded no. And then I sent an email, copied to them  
4     and said, well, have you ever had seen this RBC account  
5     statement which was apparently put over. That was  
6     the extent of the communication I believe that  
7     Mr. Van Tol is not on.

8             THE COURT: Okay. Does plaintiff need time to  
9     make a -- let me say this. From plaintiff's counsel, I  
10    pretty much received a letter arguing that Mr. Van Tol  
11    has a conflict. It wasn't a formal motion. Do you  
12    intend to make a formal motion?

13            MR. ESSER: Your Honor, some of --

14            THE COURT: Go ahead.

15            MR. ESSER: The answer is some of that will  
16    end up depending upon what the Court ends up doing  
17    today. If the receiver is put in place permanently,  
18    then we have the belief and the receiver steps in as a  
19    new management for the company, has control of all his  
20    assets, makes decisions about which counsel are hired  
21    then as well. Of course then it would be up to the  
22    receiver whether or not he wanted to keep on retaining  
23    Hogan or not, whether he thought there was any claim to  
24    be made for return of fees from them, et cetera.

25            So to the extent the Court grants relief

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1 requested and keeps the permanent receiver, then  
2 Mr. Levine can make that decision. I -- my assumption  
3 sitting here is that he will choose not to continue to  
4 allow them to represent Prime.

5 THE COURT: You think that if I continue with  
6 the receiver in place, he's going to make the decision  
7 who is representing Prime?

8 MR. ESSER: Yes.

9 THE COURT: You don't think that's the Court's  
10 decision?

11 MR. ESSER: Well, I believe that the receiver,  
12 if he is appointed in the capacity as new management for  
13 the company, then would make that decision on a  
14 going-forward basis of who he would use going forward.

15 THE COURT: Yeah, probably not.

16 MR. ESSER: Okay.

17 THE COURT: Mr. Van Tol?

18 MR. VAN TOL: Nothing, your Honor. Thank you.

19 THE COURT: Okay. In any case, do you intend  
20 to make a formal motion?

21 MR. FENLON: Your Honor, to the extent that  
22 Hogan continues to represent Prime, yes, plaintiff will  
23 make a motion to disqualify them.

24 THE COURT: All right. And, Mr. Van Tol, you  
25 will need time to respond?

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1 MR. VAN TOL: Yes, your Honor, please.

2 THE COURT: Are there any -- is there any  
3 other briefing on any issue that the plaintiff feels is  
4 necessary before I make a decision on whether the  
5 receiver should be made permanent at this time?

6 MR. FENLON: No, your Honor. We think the  
7 Court has a complete record upon which to make a  
8 determination on that issue and that's the sole issue  
9 that we believe is currently before the Court for  
10 determination today.

11 THE COURT: Do you need any more time to  
12 brief, Mr. Van Tol?

13 MR. VAN TOL: No, your Honor. While we're  
14 here, I did want to make two more points of  
15 receivership, but as to written submissions, no.

16 THE COURT: Go ahead on the receivership.

17 MR. VAN TOL: Two points, your Honor, and they  
18 relate to cases I can cite to you. The first is case  
19 law is clear that where you are a party seeking legal  
20 remedies in a lawsuit, you can't use a receivership  
21 process to secure those monies so that they are later to  
22 collect. And that case is Zyppah case -- Z-Y-P-P-A-H --  
23 Southern District. Also the JDG Mortgage case, both of  
24 them said if you are in a case even if you're alleging  
25 fraud, if you want damages, you can't get a

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1 receivership, and Compass has been upfront, your Honor.  
2 They say you want a receiver because we want to make  
3 sure the money is there to collect. That theory  
4 secondly also violates the Owens case out of the  
5 Southern District which cites Supreme Court precedent  
6 *Grupo Mexicano*.

7 In *Grupo Mexicano*, there is an attempt to get  
8 an injunction to secure a future money judgment. It's  
9 exactly what going on here, your Honor. That is not the  
10 use of a receivership. Your Honor is well familiar with  
11 receiverships. They come up a lot in property  
12 situations where a company says I want a receivership to  
13 secure this hotel because I'm going to foreclose on it,  
14 and that's an important third point, which is the Star  
15 City Case that is cited -- sorry -- Star Texas Case  
16 cited to you for the fact that there can be provisional  
17 remedy during an arbitration.

18 That arbitration clause, your Honor,  
19 specifically said you can appoint a receiver. That's  
20 not uncommon when there's a bank trying to foreclose.  
21 Our arbitration clause does not say that. It says in  
22 aid of arbitration, in other words, force people to  
23 arbitrate. It's a very broad waiver of any court  
24 proceedings. It doesn't work -- it doesn't fit  
25 together, your Honor. Receiverships are not for

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1 litigation cases that are headed to arbitration where  
2 you're seeking damages.

3 THE COURT: Well, in aid of arbitration, don't  
4 you think that what the plaintiffs are trying -- the  
5 plaintiff is trying to do in terms of figure out where  
6 the money is, what money is available would aid an  
7 arbitrator? I mean, when you go to arbitration, it's  
8 all about money.

9 MR. VAN TOL: That's the problem, your Honor.  
10 You can't use a receiver to secure money damages.  
11 That's not the use of a receiver.

12 THE COURT: I don't think they are trying to  
13 secure the money damages. I think they're trying to  
14 sort out what if any money is even in contention, and as  
15 far as arbitrators go, when they are trying to arbitrate  
16 a case, yes, they listen to the substantive claims to  
17 try to decide whether there is liable but then if they  
18 find liability, they are obviously trying to figure out  
19 a number.

20 I know you make a significant distinction in  
21 your papers about this. That you don't dispute that  
22 there can be provisional remedies. What you're saying,  
23 the provisional remedy that the plaintiff is looking for  
24 is not an aid of the arbitration.

25 MR. VAN TOL: That's correct, your Honor.

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1 It's an -- it's an aid of securing money so that it can  
2 collect on it. And I understand their theory. The  
3 problem with it is it's against Supreme Court precedent,  
4 it's against other cases. It's against the use of  
5 receivership.

6 If they want to go to the arbitration and ask  
7 the arbitrator for a receiver, they should do so. I  
8 will object then but that's the proper forum to do it.  
9 It's not here -- respectfully, your Honor, your hands  
10 are tied here when it comes --

11 THE COURT: I'm not sure they are. I'm not  
12 sure they are. But go ahead.

13 MR. VAN TOL: Just for simple reason and,  
14 again, not suggesting any -- that the Court is thinking  
15 about doing anything that isn't, you know -- let me back  
16 up. Let me just say it again.

17 It is the fact that the Supreme Court and  
18 other courts have said if you are suing for money  
19 damages, which Compass is, and you are saying you want  
20 them to secure the money, which Compass is, you can't do  
21 that. Compass is putting on the hat saying, well, we  
22 represent all other creditors, we want to collect all  
23 money for that. They are one plaintiff, your Honor, one  
24 plaintiff with a \$15.9 million claim that needs to be  
25 arbitrated. And that's it, your Honor. The case law

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1 does not permit you to do what Compass is asking you to  
2 do.

3 THE COURT: Okay. Hold on, Mr. Levine.

4 MR. TUXBURY: Certainly, your Honor. This  
5 Court clearly has the authority to issue a -- a --  
6 appoint a receiver here. In fact, the Second Circuit  
7 addresses similar claim in the General Mills case where  
8 it was a challenge to the Court jurisdiction issue,  
9 preliminary injunction in aid of arbitration. It's an  
10 argument without merit and in board -- in the Second  
11 Circuit, it noted that if provisional remedies such as  
12 preliminary injunctions or in our case receivership,  
13 weren't available to maintain the status quo, which is  
14 what we're -- what we ask for first page of our motion  
15 is we need to identify where the accounts are.

16 We have heard representations today where the  
17 accounts are, we have received the accounts, we have  
18 heard from the receiver. Nobody knows where the  
19 accounts are. Otherwise, an arbitration becomes a  
20 hollow formality. And on top of that, I would add it's  
21 not clear that an arbitrator in New York has the  
22 authority to put an end to receivership as Your Honor  
23 clearly does.

24 My brother cites a Southern District case,  
25 Stone, for that proposition. But in that case, the

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1 arbitrator appointed a receiver after the arbitration  
2 order was issued. It was more of a collection agent who  
3 was put in place to oversee the collection of revenues  
4 from a theater production.

5 The Court there even said not clear whether  
6 the first instance they could do this. So it truly is  
7 asking this Court to send this matter to arbitration, to  
8 an individual or entity that probably doesn't have the  
9 authority to issue the receivership while the Second  
10 Circuit has made abundantly clear you do, and in fact  
11 the parties' agreement makes it clear. 13.8 --  
12 specifically the parties carved out that any party can  
13 go to a court for provisional remedies.

14 And on top of that, lest there be any doubt,  
15 the parties agree to the application of the JAMS rules  
16 which similarly provide for the parties to go to a court  
17 to seek provisional remedies receivership. Black's Law  
18 Dictionary, Second Circuit authority is a provisional  
19 remedy.

20 THE COURT: I read the JAMS language that says  
21 that there can be provisional remedies but, Mr. Van Tol  
22 is making a distinction saying that your -- your request  
23 that I appoint a permanent receiver goes more to issues  
24 about finding money that can potentially satisfy your  
25 client should your client be successful in arbitration.

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1 So he is making a little bit of a distinction saying  
2 that yes, the arbitration agreement is under JAMS says  
3 that you can move for provisional remedies, but he's  
4 saying it has to be in support of or in furtherance of  
5 the arbitration, and that's where the distinction lies.

6 MR. TUXBURY: The receivership would -- would  
7 aid in furtherance of arbitration because it would  
8 maintain the status question. You look at the elements  
9 of the factors for receivership here. There are all  
10 met. We have fraud, we have irreparable harm. We have  
11 a risk that the money will be dissipated.

12 We -- you heard from my colleague outlining  
13 what happened to Compass's money as we can see the  
14 accounts with the expenditures on RM Auction and the  
15 like. So we are not seeking to attach the specific  
16 money damages. We're claiming here. We are asking for  
17 appointment of receiver because that's the only way to  
18 ensure that any arbitration is not a hollow formality,  
19 that we need to identify what money is actually  
20 available, where it is.

21 As my brother said moments ago, they believe  
22 they sent it all on their own. There's no evidence of  
23 that. Now they say they don't know where the money is.  
24 So a receivership here is undoubtedly an aid of  
25 arbitration because without it, there's nothing to

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1 arbitrate because it's all gone away. So I think we  
2 have -- this Court, I would call it, clearly has the  
3 authority to exercise discretion and it's a -- it's  
4 an exercise of discretion when we look at the factors.  
5 I think they're clearly met here.

6 THE COURT: Okay.

7 MR. VAN TOL: Your Honor?

8 THE COURT: Mr. Van Tol.

9 MR. VAN TOL: Big distinction between a  
10 preliminary injunction, maintaining status quo and a  
11 receivership. A receivership is a very broad remedy  
12 which entails taking over of a company. Compass did not  
13 seek an injunction saying there's a piece of property  
14 there, your Honor, stop it from going anywhere. That is  
15 not what they sought.

16 The cases they cite are completely different  
17 from what they're really trying to do which is they're  
18 asking you to make sure that there's enough money for  
19 them to collective at the end of the day. While I  
20 understand their motivation, your Honor, it's simply --  
21 it's simply against Supreme Court precedent.

22 MR. LEVINE: Thank you, Judge. Just a couple  
23 points. I would think that Prime Capital needs to be  
24 here, wants to be here because they're pointing the  
25 finger at Berone. It seems like they need to make a

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1 cross claim against Berone. So one way -- one way or  
2 the other, they -- they should want to be in this court  
3 that's where Berone is.

4 THE COURT: Well, Berone is not here, just for  
5 the record.

6 MR. LEVINE: I understand but they -- they  
7 have been -- they're a defendant, they are a named  
8 party. They may not be defending but they're here. The  
9 other points are, Judge, I mean, it -- there are other  
10 victims here. This is not strictly a two-party dispute.

11 THE COURT: Well, it is for me a two-party  
12 dispute.

13 MR. LEVINE: I understand.

14 THE COURT: It's Compass versus Prime Capital  
15 Venture, LLC, for me.

16 MR. LEVINE: I understand that, Judge, but if  
17 I -- if I remain in place and if I'm able to recover  
18 monies, I think there will be a big question of what we  
19 do with those monies and that's -- that's where the --  
20 the -- the inquiry may get broader. There's also a  
21 question of what -- what monies a receiver, if I can  
22 remain in place, can recover from parties that are --  
23 that are from -- the individuals and/or entities that  
24 are not parties to this case presently.

25 So it's really a much broader situation than I

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1 think is -- is apparent just on its face. That's my  
2 point, your Honor.

3 THE COURT: Okay.

4 MR. TUXBURY: If I could just address --  
5 there's a distinction somehow in provisional remedy, a  
6 preliminary injunction and a receivership. The question  
7 here for the Court is that provisional remedies. If  
8 there was some account out there with \$15 million, let's  
9 say, a preliminary injunction by Compass would be the  
10 appropriate provisional remedy in aid of arbitration.  
11 We don't have that here.

12 What we have here is -- we don't know where  
13 the money is. No one knows where the money is. There's  
14 evidence that it's fraud. So a proper provisional  
15 remedy in this case, as in other cases, Cypher  
16 (phonetic) case, for example, that we cite is the  
17 appointment of a receiver here. So we are talking  
18 about the toolkit available to the Court, not to  
19 identifying the \$15 million but here as to simply aid  
20 the arbitration by maintaining the status quo.

21 THE COURT: Okay.

22 MR. VAN TOL: Your Honor, on the fraud point,  
23 your Honor, it's become apparent to us, and I agree with  
24 the Mr. Levine to the extent that we likely have cross  
25 claims against Berone. The focus should should be on

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1 Berone. Berone lied to Prime Capital. They are the  
2 fraudster here, your Honor. If you want to put any  
3 company into receivership, it's Berone.

4 Prime Capital has been cooperating with anyone  
5 who wants to go after Berone. We did not object to any  
6 subpoenas going to Berone. It was a vastly illuminating  
7 to us that we had been lied to. So what they're  
8 essentially asking for is a receivership against a  
9 company that on this record before Your Honor is a  
10 victim of another party who isn't even here today.

11 THE COURT: There are allegations that your  
12 principal allegations lied at a bankruptcy hearing.  
13 I've read the first report from the receiver, I know you  
14 have too, which indicates that your client couldn't  
15 produce any records at the time of the meeting, that he  
16 didn't know where records were, that somebody living in  
17 his home in Virginia might have the records.

18 MR. VAN TOL: Your Honor, I was at that  
19 meeting and I have to correct at least part of that  
20 statement. Mr. Levine asked Mr. Roglieri if he had  
21 access to the underlying files for each deal. He said  
22 they are kept by Miss Humphrey and she lives in Virginia  
23 Beach. If I want to get those records, I email her, she  
24 sends them to me. It's not that Mr. Roglieri can't go  
25 on his own computer system; he can. He's the -- he's

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1 the head of the company, your Honor. He has 25 people  
2 working for him.

3 THE COURT: At the bankruptcy, did he indicate  
4 that somebody was his accountant and then that  
5 accountant was contacted and said I've never done any  
6 work for Prime?

7 MR. VAN TOL: I can explain that as well,  
8 your Honor.

9 THE COURT: Please do.

10 MR. VAN TOL: Mr. Sardone is the accountant  
11 for all of the Prime entities. He had not heard of  
12 Prime Capital Ventures because Prime Capital Ventures  
13 had not yet filed a tax return. Prime Capital Ventures  
14 came into being in late 2022, started business in '23.  
15 It has not yet filed a tax return. Mr. Sardone then  
16 spoke to Mr. Roglieri, who then told Mr. Sardona what  
17 Prime Capital is, he called the trustee and said I'm  
18 happy to work with you on that account, I hadn't heard  
19 for that reason.

20 They are confecting what they call a lie, your  
21 Honor, when it is Mr. Roglieri saying he thought his  
22 accountant knew about it, his accountant didn't because  
23 it's a new entity.

24 It's as simple as that. That's not a fraud  
25 allegation that holds up. None of the allegations --

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1 look at the allegations in the complaint. They have  
2 alleged that Berone and Prime Capital together run Prime  
3 Ventures, LLC. That's not true, it's a sole member,  
4 that's wrong.

5 They have alleged that we lied about the  
6 \$52 million being in a bank account. That's not the  
7 case. We were defrauded by someone else.

8 They've alleged that we don't have an  
9 accountant. Also not in the case, your Honor. These  
10 are the flimsiest of fraud allegations and the key is  
11 they're allegations. This is not the clear and  
12 convincing evidence that you need to appoint a receiver.

13 MR. ESSER: Just one -- just one point,  
14 your Honor.

15 THE COURT: Yes.

16 MR. ESSER: That was to -- Mr. Van Tol, I'm  
17 sure, unintentionally misspoke. The record is  
18 100 percent clear that the entity was formed in 2021.  
19 It was issuing press releases in early 2022. So as  
20 Mr. Levine properly said in his report, they never filed  
21 any tax returns for 2022, and they are well past any  
22 extension deadline for that. And obviously, as  
23 Mr. Van Tol has now said, they didn't even have an  
24 accountant. They can't produce financial statements.  
25 The most simple, basic stuff. As receiver

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1 said, they have given him nothing. The Court has  
2 ordered them -- the bankruptcy court previously had  
3 ordered them to provide records, which they failed to do  
4 to the interim trustee. Your Honor ordered them to  
5 provide records like financial statements and other  
6 things to the trustee; they have failed to do that.

7 So that point about the tax returns is  
8 100 percent incorrect. They were formed in 2021.

9 MR. VAN TOL: I'm sorry to correct Counsel  
10 again, and I do accept that Prime was formed in 2021,  
11 didn't start doing the joint venture until '22, the  
12 business was in '23.

13 THE COURT: The joint venture that Berone says  
14 doesn't visit.

15 MR. VAN TOL: Berone who has defrauded,  
16 your Honor.

17 THE COURT: You know, I certainly, sitting  
18 here listening to the issues in this case, can't figure  
19 out who committed a fraud upon whom but there are very,  
20 very concerning aspects of this matter.

21 MR. VAN TOL: Your Honor, if you read our  
22 sur-reply, you will see you can put the two exhibits  
23 side by side; they're not the same. And we have the  
24 emails where Prime -- excuse me -- where Berone sent  
25 statements to us that say 20 million and now we find out

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1 they are two or three. But to one last point about what  
2 Mr. Esser said, it is not the case that there was a  
3 failure to cooperate with the interim trustee. We have  
4 submitted the declaration of Miss Humphrey who goes  
5 through the documents that we gave to the trustee. We  
6 offered to meet with the trustee; he didn't take us up  
7 on that offer. Not blaming him. It was the holidays.

8           However, it is not the case that there was a  
9 lack of cooperation. Plaintiffs haven't gotten  
10 everything they wanted because plaintiffs always want  
11 everything. We are in litigation. They haven't served  
12 any document requests on Prime Capital, they haven't  
13 done anything that you would expect except, to their  
14 credit, two third-party subpoenas where we're looking at  
15 the periphery. But as to Prime, there's been no  
16 document requests from plaintiff to give us the records.

17           The receiver has asked us for, we're working  
18 on them. We are doing that in good faith.

19           THE COURT: Okay. I think that I understand  
20 the positions of both sides. I have actually read every  
21 word of the voluminous papers that have been submitted.  
22 I will give plaintiff a brief period of time to submit a  
23 formal motion on the issue of Mr. Van Tol's law firm  
24 representing both entities, the one in Florida and this  
25 case, and I will get a decision out on the issue

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1 regarding whether the receiver will be permanent or  
2 temporary as soon as is practicable.

3 The receiver will stay in place pending that  
4 written decision that I will file.

5 MR. VAN TOL: Would you like to set a briefing  
6 schedule for that? I don't think we have one yet.

7 THE COURT: Yes, I -- we can do that but from  
8 what I'm hearing, there are -- I haven't heard that  
9 there's any significant opposition to the fact that  
10 there is a binding arbitration clause. So I would just  
11 ask you to speak amongst yourselves to determine whether  
12 or not such a motion is really necessary because no  
13 matter what I decide, you can still be marching toward  
14 your arbitration, and I am not hearing anything from the  
15 other side that is saying, oh, no, this case is not  
16 going to be arbitrated.

17 So talk and confer before you feel that you  
18 need to make a motion on arbitration.

19 MR. VAN TOL: Thank you, your Honor. We will.

20 THE COURT: Okay. Thank you. Court stands  
21 adjourned.

22 MR. VAN TOL: Thank you, your Honor.

23 (Proceeding concluded.)

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## C E R T I F I C A T I O N

I, Lisa L. Tennyson, RMR, CSR, CRR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Lisa L. Tennyson

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